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APPELLANT PRO SE:

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**IN THE
COURT OF APPEALS OF INDIANA**

RANDY R. JONES,)	
)	
Appellant-Petitioner,)	
)	
vs.)	No. 82A01-0712-CV-613
)	
STATE OF INDIANA,)	
)	
Appellee-Respondent.)	

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable J. Douglas Knight, Judge
Cause No. 82D03-0709-PO-5

September 8, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Diana Frazier (“Frazier”) obtained a protective order in Vanderburgh Superior Court against Randy Jones (“Jones”). Jones appeals pro se and argues that the allegations in Frazier’s petition for a protective order were insufficient and not supported by the evidence. We affirm.

Facts and Procedural History

In 2004, Frazier and Jones were involved in a romantic relationship and began living together. On March 23, 2007, Jones was sent to prison for being an habitual traffic violator. Shortly thereafter, Frazier became involved in a romantic relationship with Jones’s friend.

On September 27, 2007, Frazier filed a petition for a protective order against Jones. In the petition, Frazier alleged that she was a victim of domestic violence in that Jones physically harmed her and placed her in fear of physical harm. Frazier described two incidents where Jones hit Frazier or “beat [her] up” and also alleged that Jones wrote “threatening letters” to her. Appellant’s App. p. 4.

A hearing was held on Frazier’s petition on October 11, 2007. Jones did not appear. However, prior to the date of the hearing, he filed a motion to dismiss Frazier’s petition. At the hearing, Frazier testified that she and Jones had been involved in a romantic relationship prior to his incarceration. She stated that Jones hit her frequently and she “used to have black eyes all the time.” Tr. p. 6. She also testified that Jones hit and kicked her in the face when they lived in South Carolina in 2006. *Id.* at 7. She also described an occasion where Jones attacked her while they were in a parked car. Frazier testified that Jones wrote her letters from prison, but admitted that they were not

threatening. However, she stated that he has written threatening letters to her new boyfriend. Id. at 8-9.

The trial court concluded that Frazier established, by a preponderance of the evidence, that “domestic or family violence has occurred sufficient to justify the issuance of” a protective order. Appellant’s App. p. 21. The court ordered the protective order to remain in effect until October 11, 2012. Jones now appeals.

Standard of Review

Frazier has not filed an appellee’s brief. We will not undertake the burden of developing arguments for the appellee. Painter v. Painter, 773 N.E.2d 281, 282 (Ind. Ct. App. 2002). Applying a less stringent standard of review, we may reverse the trial court if the appellant establishes prima facie error. Id. Prima facie error is defined as at first sight, on first appearance, or on the face of it. Id.

Discussion and Decision

“A person who is or has been a victim of domestic or family violence may file a petition for an order for protection against a . . . family or household member who commits an act of domestic or family violence[.]” Ind. Code § 34-26-5-2 (Supp. 2007). “Upon a showing of domestic or family violence by a preponderance of the evidence, the trial court shall grant relief necessary to bring about a cessation of the violence or the threat of violence.” Ind. Code § 34-26-5-9(f) (Supp. 2007). The petitioner bears the burden of proving at least one allegation in a petition for a protective order by a preponderance of the evidence. Id.; see also Tons v. Bley, 815 N.E.2d 508, 511 (Ind. Ct. App. 2004). In determining the sufficiency of the evidence, we neither reweigh the

evidence nor resolve questions of credibility. Id. We look only to the evidence of probative value and reasonable inferences that support a trial court's judgment. Id.

First, we address Jones's argument that his due process rights were violated because the trial court did not afford Jones sufficient time to respond to Fraizer's petition or to make arrangements to appear at the hearing.¹ In essence, Jones argues that he was not given the opportunity to face his accuser.

Indiana Code section 34-26-5-9 provides in pertinent part:

(a) If it appears from a petition for an order for protection or from a petition to modify an order for protection that domestic or family violence has occurred or that a modification of an order for protection is required, a court may:

- (1) without notice or hearing, immediately issue an order for protection ex parte or modify an order for protection ex parte; or
- (2) upon notice and after a hearing, whether or not a respondent appears, issue or modify an order for protection.

(b) A court may grant the following relief without notice and hearing in an ex parte order for protection or in an ex parte order for protection modification:

- (1) Enjoin a respondent from threatening to commit or committing acts of domestic or family violence against a petitioner and each designated family or household member.
- (2) Prohibit a respondent from harassing, annoying, telephoning, contacting, or directly or indirectly communicating with a petitioner.
- (3) Remove and exclude a respondent from the residence of a petitioner, regardless of ownership of the residence.
- (4) Order a respondent to stay away from the residence, school, or place of employment of a petitioner or a specified place frequented by a petitioner and each designated family or household member.

- (6) Order other relief necessary to provide for the safety and welfare of a petitioner and each designated family or household member.

¹ Denial of a hearing under the Civil Protection Order Act does not implicate the procedural due process guarantees of the Fourteenth Amendment. See Essany v. Bower, 790 N.E.2d 148, 151 (Ind. Ct. App. 2003) ("It is well settled that the 'requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property.'")

(c) A court may grant the following relief after notice and a hearing, whether or not a respondent appears, in an order for protection or in a modification of an order for protection:

(1) Grant the relief under subsection (b).

Jones was served with a notice to appear for the October 11, 2007 hearing on Frazier's petition for a protective order. On October 9, 2007, Jones filed a motion to dismiss and supporting memorandum. In his memorandum, he requested a dismissal of the petition, and denied Frazier's allegations. At the October 11, 2007 hearing, the trial court denied Jones's motion to dismiss. Jones also requested a continuance in his memorandum, but did not provide any specific reason for the continuance. Although it is evident that Jones was unable to appear due to his incarceration, he could have requested a continuance so that he could make arrangements to appear telephonically, but did not do so. Because Jones did not make any attempt to appear, telephonically, or otherwise, we cannot conclude that the trial court erred when it held the hearing in his absence.

Next, Jones argues that the trial court should have dismissed Frazier's petition because she "perjured herself" in her petition. Br. of Appellant at 7. In her petition, Frazier alleged that Jones "keeps on writing threatening letters." Appellant's App. p. 4. However, at the hearing, Frazier stated that the letters Jones wrote to her were not threatening and only the letters he sent to her current boyfriend were threatening. Tr. pp. 8-9. Although this testimony by Frazier was inconsistent with one allegation in her petition, Frazier consistently described incidents both in her petition and at the hearing concerning occasions when Jones physically abused her. This evidence supports the issuance of the protective order and Jones's argument to the contrary is merely a request to reweigh the evidence and Frazier's credibility, which we will not do.

For all of these reasons, we conclude that the trial court did not err when it granted Frazier's petition for a protective order.²

Affirmed.

BAKER, C.J., and BROWN, J., concur.

² Jones's arguments relying on citations to Indiana Code section 5-26.5-2-6, and Trial Rules 6 and 65 are without merit and do not require any further discussion.